VICTORIA IRON PIPE RUTHERFORD, Appellant	:	Order Affirming Decision as Modified
v.	:	
	:	Docket No. IBIA 97-131-A
BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	February 16, 1999

This is an appeal from an April 18, 1997, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), requiring that Blackfeet Allotments 1211, 1213-A, 1216, and 1257 (or 1257-A) be returned to Blackfeet Range Unit (RU) 160. 1/ For the reasons discussed below, the Board affirms the Area Director's decision as modified herein.

On January 13, 1989, the Blackfeet Tribal Business Council enacted Resolution 141-89, establishing grazing policies and procedures for the permit period beginning March 10, 1989, and ending March 9, 1999. Section V of the resolution provided in part:

> A. Landowners may reserve their allotment out of a range unit and negotiate their own lease with the consent of all the heirs to the allotment. By so doing the landowner takes responsibility for the fencing and management of the allotment. It becomes the landowners responsibility to control livestock on the allotment. It will be the Agency's responsibility to arbitrate disputes.
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> B. The deadline for reserving land is the end of July each year. Because, the Agency is required to give the permittee 180 days notice of the removal of land from his range unit (25 CFR166.15(c)). [2/]

1/ The Area Director's decision refers in some places to Allotment 1257 and in other places to Allotment 1257-A. The documents in the record are also inconsistent in this regard. It is conceivable that the two numbers refer to the same allotment, although given certain information in the record, this seems unlikely. In any event, the conclusion the Board reaches here would apply equally to whichever of the two was withdrawn from RU 160.

2/ 25 C.F.R. § 166.15(c) provides:
"The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days' written notice for allocated Indian use or for grazing exempt

The Business Council amended the landowner consent provision in subsec. V.A on three occasions. On May 6, 1993, it reduced the required consents to 51% of the ownership interests. On October 14, 1993, it reinstated the 100% consent requirement. On June 6, 1996, it reduced the requirement to 75%.

On April 5, 1989, the Superintendent, Blackfeet Agency, BIA, approved a grazing permit for RU 160 for the period March 10, 1989 through March 9, 1999. The permittees were Archie St. Goddard, Morris St. Goddard, and Bernard St. Goddard. The RU covered 2158.42 acres of tribal land and 12,503.22 acres of allotted land, including Allotments 1211, 1213-A, 1216, 1257 (and/or 1257-A), and 1278-A.

On December 3, 1993, Congress enacted the American Indian Agricultural Resource Management Act (AIARMA), 25 U.S.C. §§ 3701-3746. Section 105(c) of the AIARMA, as amended, 25 U.S.C. § 3715(c), provides in part:

> (c) Rights of individual landowners
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> (1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee or Indian tribe in the legal or beneficial use of his, her, or its own land or to enter into an agricultural lease of the surface interest of his, her, or its allotment or land under any other provision of law.
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> (2)(A) The owners of a majority interest in any trust or restricted land are authorized to enter into an agricultural lease of the surface interest of a trust or restricted allotment, and such lease shall be binding upon the owners of the minority interests in such land if the terms of the lease provide such minority interests with not less than fair market value for such land.
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> (B) For the purposes of subparagraph (A), a majority interest in trust or restricted land is an interest greater than 50 percent of the legal or beneficial title.

Sometime prior to November 6, 1995, Appellant asked the Superintendent to withdraw Allotments 1211, 1213-A, 1216, 1257 (or 1257-A), and 1278-A from RU 160, on the basis of Appellant's reservation of those allotments under sec. V of Resolution 141-89. 3/ On Novem-

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fn. 2 (continued)
from permit pursuant to § 166.8. Unless otherwise mutually agreed upon by the interested parties, such actions shall be effected on the annual anniversary date of the grazing permit ollowing the date of notice except when such timeliness of notice is not possible, in which case deferment of the intended action shall not be required to extend beyond 180 days from the date of the notice."

3/ Appellant evidently did not make her request in writing. In response to the Board's order to supplement the record in this appeal, the Superintendent stated that the Agency had no copy of a

ber 6, 1995, the Superintendent informed the permittees that their grazing permit was being modified to withdraw the five allotments from the RU effective at the beginning of the 1996 grazing season. 4/

The permittees appealed the Superintendent's November 6, 1995, letter to the Area Director. In a decision dated January 16, 1996, the Area Director affirmed the Superintendent's withdrawal of the allotments from the RU. The permittees did not appeal the Area Director's decision to the Board.

On May 17, 1996, landowners Harvetta Iron Pipe and Beverly Iron Pipe Racine, through their attorney, wrote to the Superintendent, stating that they were appealing the withdrawal of Allotments 1211, 1212, 1213-A, 1216, and 1257-A from RU 160. 5/ They alleged, inter alia, that Appellant had misrepresented to some landowners the purpose for which she was collecting their signatures. They also requested that the allotments be restored to the RU, stating that they were supported in this request by landowners holding more than 50% of the interests in each allotment.

The Superintendent treated the letter as a request for reconsideration and responded to it on June 13, 1996. He declined to restore the allotments to the RU, stating that his decision to withdraw the allotments from the RU had been based on the AIARMA.

Iron Pipe and Racine appealed to the Area Director. On April 18, 1997, the Area Director reversed the Superintendent's June 13, 1996, decision. He held that the AIARMA's landowner consent provision did not apply to the permit for RU 160 because the AIARMA was enacted after the permit was issued and would therefore, if applied here, interfere with the contractual rights of the permittees. He also discussed the allegations of misrepresentation made by Iron Pipe and Racine, but it is not clear whether he intended to base his decision to any extent on these allegations.

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fn. 3 (continued)
written request and therefore believed the request had been made orally. The materials submitted by Appellant evidently consisted of computer printouts showing the ownership of each allotment, upon which some of the landowners had placed their signatures.

Nothing in the record shows the date on which Appellant submitted these materials. It is not clear, therefore, whether Appellant complied with the July 31 deadline set in Resolution 141-89.

4/ This notice clearly was not given 180 days prior to the anniversary date of the grazing permit. See 25 C.F.R. § 166.15(c), quoted supra, n.2.

5/ The appeal was timely because Iron Pipe and Racine were not sent copies of the Superintendent's Jan. 16, 1996, decision when it was issued. See 25 C.F.R. § 2.7.

Despite the mention of Allotment 1212 in Iron Pipe and Racine's appeal, there is no evidence in the record that Allotment 1212 was withdrawn from RU 160. The Area Director's decision did not address Allotment 1212, and therefore neither does the Board.

Iron Pipe and Racine did not challenge the withdrawal of Allotment 1278-A from the RU, and it is therefore not at issue in this appeal.

Appellant appealed the Area Director's decision to the Board and filed an opening brief. A brief in support of Appellant was filed by thirteen landowners. Iron Pipe and Racine did not file a brief.

Appellant contends that the AIARMA controls here; that she obtained the consents required by the AIARMA; and that Blackfeet Resolution 141-89 is invalid because it conflicts with the AIARMA. The thirteen landowners agree with Appellant that the AIARMA controls. They expand upon her argument, contending that Congress has the power to interfere with contractual rights and that the AIARMA must therefore be applied retroactively to the permit for RU 160. In a separate argument, they contend that the permit for RU 160 is void because it conflicts with25 C.F.R. § 166.14 in that, although it was issued for a ten year term, there is no evidence of substantial development or improvement to the land. 6/

The Board concludes that it is not necessary to determine whether or not the AIARMA consent provision applies to the permit for RU 160. Assuming arguendo that it does apply, and that therefore Appellant's withdrawal request could be approved based upon the consent of landowners representing only a majority of the interests in the allotments, there remains a question as to whether there is sufficient evidence to show that such consent was given in this case.

As noted above, Appellant obtained the signatures of landowners on computer printout lists of landowners. Nothing on the landowner lists shows the purpose for which the signatures were requested or the reason they were given. Nor is there any other document in the record which shows that the landowners were advised of the reason Appellant was requesting their signatures.

At the time they filed their appeal with the Superintendent, Iron Pipe and Racine signed a statement, in which they were joined by one other landowner, stating that they signed the landowner lists because Appellant had told them she was seeking their consent to the sale of her interests in the allotments. On appeal to the Area Director, they contended that other landowners had reported the same experience and that one landowner alleged that her signature had been forged. Appellant did not dispute any of these allegations before BIA and has not disputed them before the Board.

In Gullickson v. Acting Aberdeen Area Director, 26 IBIA 177 (1994), two landowners alleged that they had not consented to a lease and further alleged that their signatures had been forged. The disputed signatures appeared, as here, only on a list of landowners. The Board stated: "Nothing on the list of landowners indicates that, by signing it, a landowner gave his/

6/ 25 C.F.R. § 166.14 limits the terms of grazing permits to 5 years "except where substantial development or improvement is required, in which case the maximum period shall be 10 years."

The issue of the permit term was not raised to the Area Director. Nor does Appellant raise it in this appeal. Therefore, the Board does not address it. See, e.g., Welk Park North v. Acting Sacramento Area Director, 29 IBIA 213, 219 (1996) (The Board has a well-established practice of declining to consider arguments or issues raised for the first time on appeal to the Board).

her consent to a lease. Therefore, even assuming [the two landowners] signed the landowners' list, the signatures are not persuasive evidence of their consent to a lease." 26 IBIA at 179.

The Board reaches the same conclusion in this case, finding that the signatures of landowners on the landowner lists are not persuasive evidence of landowner consent to Appellant's withdrawal request. In light of the allegations made by Iron Pipe and Racine concerning misrepresentations made by Appellant, and especially in light of Appellant's failure to dispute those allegations, the Board finds that there is insufficient evidence that a majority of the landowners consented to Appellant's withdrawal request. The Board finds that the Area Director's decision should be affirmed on this basis.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's April 18, 1997, decision is affirmed as modified to state that it is based upon the lack of evidence showing that a majority of the landowners consented to Appellant's withdrawal request. 7/

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

7/ The permittees were not listed as interested parties in this appeal. They will be sent copies of this decision and may file a petition for reconsideration if they believe the Board's decision is in error.